No. 80-2078

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

DAMES & MOORE, a Partnership,

Petitioner,

—against—

DONALD T. REGAN, THE SECRETARY OF THE TREASURY OF THE UNITED STATES OF AMERICA, and THE UNITED STATES OF AMERICA,

Respondents.

ON CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MOTION FOR LEAVE TO FILE AND BRIEF, *AMICI CURIAE*

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONER'S RIGHT TO COMPENSATION

Plaintiffs listed in Appendix A annexed hereto ("*amici*") respectfully move this Court for leave to file the accompanying brief in this case as *amici curiae* supporting Dames & Moore's

right to compensation for the taking of its claims and the nullification of its attachments against Iranian property.

There are approximately 150 cases filed in the United States District Court for the Southern District of New York against Iran, its agencies, instrumentalities and controlled entities, seeking nearly $2 billion in damages and other relief. The largest portion of the financial assets that must be transferred pursuant to the Iran-U.S. Settlement Agreement by July 19, 1981 are held by domestic banking institutions in the Southern District of New York; most, if not all, of these assets are subject to attachments and/or injunctions. As a result, the importance the 150 cases bear to the issues presented in this action cannot be overstated. Indeed, the United States noted the significance of the New York litigation in the present situation in its memorandum in support of Dames & Moore's petition for a writ of certiorari before judgment.*

The *amici* are plaintiffs in 42 of the 150 actions in the Southern District of New York seeking damages aggregating in excess of $600 million.** In each of these actions, the *amici* have obtained orders of attachment against Iranian property located in the Southern District. The *amici* represent, therefore, one of the largest groups of claimants in the country.

At the time the Iran-U.S. Settlement Agreement were entered into on January 19, 1981, 96 of the 150 cases involving Iran pending in the United States District Court for the Southern District of New York were consolidated and on appeal to the United States Court of Appeals for the Second Circuit for the purpose of deciding certain common issues of law. In view of the changed circumstances resulting from the Iran-U.S. Settlement Agreement, the Second Circuit, on April 9, 1981, remanded the 96 cases with instructions that the district court select a test case and "join the United States as a party in [that]

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* Page 8 of the United States' "Memorandum for the Respondents" filed June 10, 1981 in this action.

** Also joining in this motion are plaintiffs in two actions in the United States District Courts for the District of Maryland and the Western District of Virginia, wherein attachments were also obtained against Iranian property.

single case in which the issues raised by the Iranian Agreement and the Presidential Orders are squarely presented." *New England Merchants National Bank v. Iran Power Generation and Transmission Co.*, Nos. 80-6254-6349 and related cases, slip op. at 2463 (2d Cir. Apr. 9, 1981).

On May 28, 1981, pursuant to the instructions from the Second Circuit, the Hon. Kevin T. Duffy selected a test case, *Marschalk Co., Inc. v. Iran National Airlines Corp.*, 79 Civ. 7035, and joined the United States as a party. On June 5, 1981, a hearing was held at which the Iranian Government, the United States and Marschalk argued fully the constitutional issues raised by the Iran-U.S. Settlement Agreement in the context of a single case. On June 11, 1981, the same day on which this Court granted certiorari in the instant case, Judge Duffy, in an 89-page opinion, held that the President did not possess the statutory or constitutional authority to suspend lawsuits against Iran and to vacate attachments and injunctions against Iranian property. Judge Duffy also held, in the alternative, that if the President did have statutory or constitutional authority to exchange United States nationals' claims and security for the release of the hostages, his actions nevertheless constituted a taking which requires compensation under the Constitution. Judge Duffy further reasoned that this taking was also unconstitutional because he found that claimants have no Tucker Act remedy due to the treaty exclusion provision, section 1502 of Title 28, United States Code.*

Five days after Judge Duffy's decision, on June 15, 1981, the Second Circuit, upon motion by the New York garnishee banks holding the bulk of Iranian financial assets in this country,

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* The United States stated, in its memorandum of June 10, 1981 in support of Dames & Moore's petition for a writ of certiorari, that "if the Second Circuit or Southern District should nevertheless conclude that the President was without authority in some respects to enter into and implement the Agreement with Iran, the government would intend to seek immediate review in this Court in order that bank-held assets would be transferred by July 19." Memorandum for the Respondents at 9, n.*. Although Judge Duffy rendered a decision against the United States on the next day, June 11, 1981, the United States, despite its representations to the contrary, has not taken any steps to have this Court review that significant decision.

certified to this Court, pursuant to section 1254(3) of Title 28, United States Code, the following questions in connection with the test case, *Marschalk Co., Inc.*, chosen in the consolidated proceedings in New York:

> 1. Was the action of the President in suspending claims which may be presented to the Claims Tribunal and in declaring that they shall have no legal effect in the courts of the United States within his statutory and/or constitutional authority?
>
> 2. Was the action of the President in nullifying the attachments acquired on blocked assets and requiring the transfer of those assets to Iran within his statutory and/or constitutional authority?
>
> 3. Did the action of the President in suspending the claims or nullifying the attachments constitute a taking of property for which compensation must be paid?

The questions certified are substantially similar to those presented in Dames & Moore's petition for a writ of certiorari.

The *amici's* accompanying brief argues that the President's actions purporting to suspend claims of United States nationals and nullify attachments against Iranian property constitute a Fifth Amendment taking requiring compensation. The *amici* assert that this Court should now determine whether a Tucker Act remedy is available to them. *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974). The *amici* argue, contrary to the holding of Judge Duffy, that they do have a Tucker Act remedy and are not barred from the Court of Claims by section 1502 of Title 28, United States Code. Should this Court determine that the *amici* do not have a Tucker Act remedy, the *amici* request this Court to delay implementation of the Iran-U.S. Settlement Agreement until the United States provides a mechanism for compensation.

Although numerous *amici* will seek to file briefs with this Court, most of these *amici* will be concerned with the issue of the President's statutory or constitutional authority to suspend claims and nullify attachments—not with the issue of compen-

sation. In the proceedings before Judge Duffy, Baker & McKenzie, on behalf of its clients and 25 other law firms representing plaintiffs in 32 actions in the Southern District of New York, briefed fully the compensation issue raised by the Iran-U.S. Settlement Agreement. With the exception of his conclusion as to the availability of the Tucker Act remedy, Judge Duffy's reasoning substantially followed the position taken in the Baker & McKenzie compensation brief.

As a practical matter, the *amici* may have no other way to protect their interests than to participate in this case as *amici curiae*. The *amici* believe the Court's decision in this action may be dispositive of issues common to all of the Iranian cases—including the compensation issue. The *amici's* participation as *amici curiae* in *Dames & Moore* would not impede the progress of the case and would provide the Court with the opportunity to consider fully the compensation issue raised by the Iran-U.S. Settlement Agreement. The United States and Bank Markazi have consented to the filing of the accompanying brief. Dames & Moore, the Government of Iran and the Atomic Energy Organization of Iran have declined to consent.

Accordingly, it is respectfully requested that this Court grant leave to file the accompanying brief as *amicus curiae*.

Dated: June 19, 1981

Respectfully submitted,

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BRIEF OF *AMICI CURIAE* IN SUPPORT OF RIGHT TO COMPENSATION

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Brownell v. National City Bank, 131 F. Supp. 60 (S.D.N.Y. 1955) 12

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Eastern Extension, Australasia & China Telegraph Co. v. United States, 251 U.S. 355 (1920) 28n
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Electronic Data Systems Corp. Iran v. Social Security Organization of Iran, No. CA 3-79-0218-F (N.D. Tex. June 7, 1981) 10,20n

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Guessefeldt v. McGrath, 342 U.S. 308 (1952) 9n

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National Airmotive Corp. v. Iran, 499 F. Supp. 401 (D.D.C. 1980) 10,15,24
New England Merchants Nat'l Bank v. Iran Power Generation and Transmission Co., 502 F. Supp. 120 (S.D.N.Y. 1980) 5n,6n,11n,19n
New England Merchants Nat'l Bank v. Iran Power Generation and Transmission Co., 508 F. Supp. 49 (S.D.N.Y. 1980) 7,24
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Security Pacific Nat'l Bank v. Iran, No. CV 79-4661-RJK (Gx) (C.D. Cal. Apr. 30, 1981) 6n

Seery v. United States, 127 F. Supp. 601 (Ct. Cl. 1955) 15,20n

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United States v. Willow River Power Co., 324 U.S. 499 (1945) 6,19

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Vishipco Line v. Chase Manhattan Bank, No. 77-1251 (S.D.N.Y. Nov. 3, 1978) 9n

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H.R. Rep. No. 95-459, 95th Cong., 1st Sess. (1977) ...	8
S. Rep. No. 95-466, 95th Cong., 1st Sess. (1977)	9
Blocking Iranian Property, Message to Congress Reporting on U.S. Action, 15 Weekly Comp. Pres. Docs. 2118 (Nov. 14, 1979)	12n
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L. Henkin, *Foreign Affairs and the Constitution* (1972)	15
Dean, *Amending The Treaty Power*, 6 Stanford L. Rev. 589 (1954)	20
Comment, *The Blocked Chinese Assets-United States Claims Problem: The Lump Sum Settlement Solution*, 3 Fordham Int'l L.J. 51 (1979-1980)	20n

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QUESTION PRESENTED

Do the actions of the President in suspending the commercial claims and nullifying the attachments of claimants against Iran and its controlled entities constitute a taking of property which is constitutional only if just compensation is paid in accordance with the Fifth Amendment?

INTEREST OF THE *AMICI CURIAE*

The *amici curiae* are corporations or other entities that have commercial claims against the Government of Iran, its agencies, instrumentalities and other controlled entities ("Iran"). The *amici curiae* have filed lawsuits against Iran in various federal district courts, and most of them have obtained prejudgment attachments or other interlocutory relief securing the payment of their claims.

Most of the *amici* are presently parties to the proceedings which consolidate 96 actions in the United States District Court for the Southern District of New York, *sub nom. New England Merchants National Bank v. Iran Power Generation and Transmission Co.*, 79 Civ. 6380.

In accordance with the Iran-U.S. Settlement Agreement[1] entered into on January 19, 1981, and by subsequent executive orders and regulations, the President has purported to suspend jurisdiction of United States courts with regard to claims of United States nationals (such as the *amici*) against Iran and to order all claimants to submit their claims to an international arbitral tribunal.[2] These orders oust the *amici* from their United States forum, require them to arbitrate their claims against Iran in an international setting and deprive them of the security which they have obtained in this country.

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[1] The "Iran-U.S. Settlement Agreement" includes two declarations of the Government of Algeria, *reprinted at* App. 21-35, by which the United States and the Islamic Republic of Iran settled the hostage crisis.

[2] Exec. Order No. 12294, 46 Fed. Reg. 14111 (1981), and Section 535.222 of the Iranian Assets Control Regulations provide for the suspension of pending lawsuits against Iran. As the Executive Order states:

> Section 1. All claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the [settlement] Declaration . . . and all claims for equitable or other judicial relief in connection with such claims, are hereby suspended, except as they may be presented to the Tribunal.

Exec. Order No. 12279, 46 Fed. Reg. 7919 (1981), and Sections 535.218(a) and 535.213(a) of the Iranian Assets Control Regulations (31 C.F.R. Part 535) provide for the vacating of all attachments against Iranian property and the transfer of the attached funds to the Federal Reserve Bank of New York "as fiscal agent of the U.S., to be held or transferred as directed by the Secretary of the Treasury." 31 C.F.R. § 535.213(a).

While petitioner Dames & Moore and other parties will address numerous issues raised by the Iran-U.S. Settlement Agreement, this brief addresses only the issue of the right of litigants in United States courts to compensation under the Fifth Amendment. The *amici* have extensively briefed this issue in both the United States Court of Appeals for the Second Circuit and the District Court for the Southern District of New York. Indeed, the District Court, in *Marschalk Co., Inc. v. Iran National Airlines Corp.*, 79 Civ. 7035 (S.D.N.Y. June 11, 1981),[3] substantially upheld the position put forth by the *amici curiae*. The compensation issue is a crucial one in the overall context of the Iranian litigation throughout this country. This Court's determination on the compensation issue clearly will affect the rights of the *amici* who are in a position similar to that of petitioner.

SUMMARY OF ARGUMENT

The *amici curiae* have asserted claims against Iran and obtained valid orders of attachment against Iranian assets in the United States. These claims and attachments constitute valuable property rights, which the United States has purported to nullify. Valid attachments cannot be taken by Executive fiat without just compensation in accordance with the Fifth Amendment. The claims in connection with which the attachments

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[3] In the United States District Court for the Southern District of New York, 96 cases were consolidated for the purpose of deciding certain common issues of law. On appeal, the Court of Appeals for the Second Circuit directed the district court to choose a test case in which the constitutional issues now before this Court would be "squarely presented." New England Merchants National Bank v. Iran Power Generation and Transmission Co., Nos. 80-6254-6349 and related cases, slip op. at 2463 (2d Cir. Apr. 9, 1981). The test case chosen by the District Court was the *Marschalk* action and an opinion was issued in that case holding that the President had acted unconstitutionally. Marschalk Co., Inc. v. Iran National Airlines Corp., 79 Civ. 7035 (S.D.N.Y. June 11, 1981).

were obtained belong to the *amici curiae*, not the Government.[4]

Since the passage of the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1332(a)(2)-(4), 1602-1611 ("FSIA"), litigants with commercial claims against foreign states are no longer at the mercy of the Executive. Such claims—cognizable under the FSIA—can in certain cases be validly secured by prejudgment attachments, and can in all cases be reduced to an enforceable judgment. The enactment of the FSIA severely curtailed the Executive's ability to treat foreign claims as property belonging to the United States. The Executive cannot control access to a judicial forum for the hearing and determination of such claims.

The contention that the attachments were issued under a "revocable" license does not destroy any right of the *amici curiae* to just compensation. The *amici curiae* never required the Executive's "permission" to sue Iranian defendants and obtain attachments. The provisions of the FSIA guarantee the *amici* those rights and the International Emergency Economic Powers Act, 50 U.S.C. §§ 1702-1706 ("IEEPA"), did not abrogate them in cases of "national emergency." To hold otherwise would permit the Executive absolute discretion to regulate congressionally granted judicial remedies. In addition, even if the license permitting attachments was a predicate to the obtaining of an attachment, the "revocable" nature of that license cannot operate to divest any *amici* of a property right acquired through, and in reliance upon, that license.

Finally, the issue of whether there exists a constitutional impediment to implementation of the Iran-U.S. Settlement

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[4] This brief will focus primarily on the issue of whether the vacatur of the orders of attachment gives rise to a compensation claim under the Fifth Amendment. By so arguing, however, the *amici* do not concede that the ousting of United States citizens from the courts does not in and of itself constitute an unlawful taking. The arguments in support of compensation apply equally to the Government's action in relegating the *amici* to a foreign arbitral tribunal. "When the right to enforce a contract in the United States courts is taken away or materially lessened, the contract and the rights thereunder are taken within the meaning of the Constitution." Marschalk Co., Inc. v. Iran National Airlines Corp., 79 Civ. 7035, slip op. at 61 (S.D.N.Y. June 11, 1981).

Agreement, because of the absence of a provision for compensation, is ripe for adjudication and the Court of Claims has jurisdiction to hear subsequent suits by the *amici curiae* under the Tucker Act, 28 U.S.C. § 1491-1506, seeking compensation for losses sustained as a result of the executive orders implementing the Iran-U.S. Settlement Agreement.

ARGUMENT

The Fifth Amendment Requires That The United States Compensate The *Amici Curiae* For The Taking Of Their Property Interests

The Fifth Amendment to the Constitution provides in pertinent part:

> No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.

In order to invoke the Fifth Amendment, it is therefore necessary to establish that (1) there are private property interests, (2) which were taken for public use, (3) without just compensation. All three elements are present in the case at bar.

The cases of the *amici curiae* are unique because most of their claims are—primarily due to the recent enactment of the FSIA—judicially cognizable in the United States courts, and are fully secured by valid attachments.[5] As explained below, the *amici*

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[5] All *amici curiae* have valid orders of attachment. Some of these orders of attachment, obtained *ex parte*, are subject to a showing by those *amici* that they have a probability of success on the merits. *See* Marschalk Co., Inc., slip op. at 66; New England Merchants National Bank v. Iran Power Generation and Transmission Co., 502 F. Supp. 120, 133 (S.D.N.Y. 1980). Other *amici curiae* obtained orders of attachment on notice, *e.g.*, Reading & Bates Drilling Co. v. National Iranian Oil Co., 79 Civ. 6034 (S.D.N.Y. Nov. 29, 1979), which are fully confirmed under New York law. *See* N.Y. Civ. Prac. L. art. 62. In either case, all judges granting such orders of attachment to the *amici curiae* have held that the defendants are not entitled to assert sovereign immunity.

curiae are protected by the Fifth Amendment in the instant situation, and the Court of Claims should be declared to be open to those *amici curiae* injured by the implementation of the Iran-U.S. Settlement Agreement.

A. The Orders Of Attachment and the Claims of the Amici Curiae *Constitute Private Property Within The Meaning Of The Fifth Amendment*

1. Orders Of Attachment Constitute Compensable Property Interests

As the district court held in *Marschalk Co., Inc.*, slip op. at 75-77, the orders of attachment obtained by the *amici curiae* constitute "property" within the meaning of the Fifth Amendment. "Property" under the Fifth Amendment is an all-embracing term. *Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438 (2d Cir. 1980). Both tangible and intangible rights, such as a lessee's expectancy that his lease will be renewed, are included within the ban on taking without just compensation. *Almota Farmers Elevator and Warehouse Co. v. United States*, 409 U.S. 470, 473 (1973); *see United States v. Willow River Power Co.*, 324 U.S. 499, 502 (1945).

Other types of security interests analogous to prejudgment orders of attachment have been held to constitute "private property." The Supreme Court has held, for example, that an amendment to the Bankruptcy Act adversely affecting certain incidents of a mortgagee's lien was unconstitutional as a taking of private property without just compensation, despite the

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albeit on different grounds. *Compare* New England Merchants, 502 F. Supp. 120, *with* Behring International, Inc. v. Imperial Iranian Air Force, 475 F. Supp. 396 (D.N.J. 1979). The situation of these *amici curiae* is therefore in sharp contrast to the plaintiffs in Security Pacific National Bank v. Government of Iran, No. CV 79-4661-RJK (GX) (C.D. Cal. Apr. 30, 1981). The court held in those consolidated cases that plaintiffs did not have valid attachments and therefore it was "unnecessary" to consider "the difficult issue of whether a Presidential settlement such as this would override valid attachments obtained pursuant to the FSIA." *Id.*, slip op. at n.24.

existence of an economic emergency. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 589 (1935); *see also Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974). The taking of a materialman's lien has similarly been held to give rise to a compensable claim. *Armstrong v. United States*, 364 U.S. 40 (1960) (lien of materialmen who had provided materials to a contractor building ships for Government constituted compensable property interest despite default of contractor and passage of title to ships to Government). In *Armstrong*, it was possible that the property underlying the materialmen's lien would eventually be owned by the Government. That fact, however, did not stop the lien from adhering, *id.* at 42, and did not affect its status as compensable property. *Marschalk Co., Inc.*, slip op. at 77; *see also Kimball Laundry Co. v. United States*, 338 U.S. 1 (1949); *Lynch v. United States*, 292 U.S. 571 (1934); *Monongahela Navigation Co. v. United States*, 148 U.S. 312 (1893).

Indeed, aside from the holding in *Marschalk Co., Inc.*, another Iranian case also held that the use of the attached assets to settle the United States' differences with Iran requires compensation. "Even if said funds were ultimately utilized by the government in obtaining the release of the hostages, this court can envision no circumstances under which the plaintiff would not be entitled to compensation from the government." *Behring International, Inc. v. Miller*, No. 80-2864, slip op. at 11 (D.N.J. Dec. 24, 1980) (dictum). Many of the *amici curiae* have already been found to have property rights that may be vacated only in accordance with the Fifth Amendment. *New England Merchants National Bank v. Iran Power Generation and Transmission Co.*, 508 F. Supp. 49, 51 (S.D.N.Y. 1980).

2. The Fact That The Attachments of the *Amici Curiae* Were Obtained After Issuance Of A General License Authorizing Judicial Proceedings Does Not Adversely Affect Their Status As Compensable Property Interests

The Government has claimed that the International Emergency Economic Powers Act authorizes the Executive, upon a

declaration of a national emergency, to terminate orders of attachment validly issued by courts of competent jurisdiction, based on his authority under the IEEPA to "prevent or prohibit, any . . . transfer of . . . property" of Iran. The Government has used this argument to rebut the assertion of the *amici curiae* that their attachments constitute valuable and compensable property rights, presumably on the theory that an interest based on a revocable license cannot constitute "property."

(a) Since neither the IEEPA nor the Constitution grants the President authority to issue "revocable licenses" granting or denying, by executive fiat, the right of the amici curiae to sue in United States courts, the issuance of a "revocable license" authorizing the attachment was unnecessary

Because of the constitutional doctrine of separation of powers, the Executive has no inherent power to interfere with judicial process or limit the jurisdiction of the courts. *United States v. Klein*, 80 U.S. (13 Wall.) 128, 147-48 (1872); *Marschalk Co., Inc.*, slip op. at 53. Since the IEEPA does not grant such authority to the Executive, the "license" granted by the Executive purporting to authorize lawsuits and permit the obtaining of prejudgment orders of attachment was unnecessary. The orders of attachment are therefore not revocable at the whim of the President.

The IEEPA was enacted to restrict presidential power under Section 5(b) of the Trading With the Enemy Act, 50 U.S.C. App. § 5(b) (1976 & Supp. I 1977) ["TWEA"]. *See* H.R. Rep. No. 95-459, 95th Cong., 1st Sess. 2 (1977). Elaborating on these new restraints, the House Report states: "As a further substantive constraint, the scope of the authorities should be *clearly limited to the regulation of international economic transactions.*" *Id.* at 10-11 (emphasis added). "International

economic transactions" include "foreign exchange transactions, transfers of credit or payments between banking institutions where a foreign interest is involved, import or export of currencies or securities," and "control or freeze [of] property transactions where a foreign interest is involved." S. Rep. No. 95-466, 95th Cong., 1st Sess. 5 (1977). Thus, while the IEEPA used broad language to give the President emergency authority in the sphere of international economic affairs and foreign commerce, it did not grant blanket congressional authorization for the President to override federal court orders with respect to property in this country.[6] It is clear that the authority granted to the President in the IEEPA was never intended to embrace any action except the blockage of assets and embargoing of trade.

It is also clear that the IEEPA is not a delegation to the President of congressional authority to affect federal judicial jurisdiction. The Government has never shown any authority for the proposition that Congress, in enacting the IEEPA, intended the President to have authority to interfere with the workings of the courts.[7] *See Marschalk Co., Inc.*, slip op. at 30. The failure of the Government to establish congressional intent to limit the jurisdiction of the courts is especially noteworthy since, just one year earlier, Congress enacted the FSIA and thereby specifically granted jurisdiction over claims against foreign states to the

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[6] In the IEEPA, Congress specifically withdrew power from the President to vest frozen assets, a power which exists under the TWEA. When assets are vested under the TWEA, procedures exist for compensating claimants alleging an interest in the vested property or creditors of aliens whose property was seized. 50 U.S.C. App. §§ 9, 34. This Court has held that the TWEA "has been construed over the Government's objection, to require repayment of just compensation, when the [Alien Property] Custodian has liquidated the vested assets." Guessefeldt v. McGrath, 342 U.S. 308, 318 (1952).

[7] Indeed, even under the TWEA, it is clear that jurisdiction is not withdrawn from the district courts. Marschalk Co., Inc., slip op. at 25; Vishipco Line v. Chase Manhattan Bank, No. 77-1251 (S.D.N.Y. Nov. 3, 1978); Kuerschner & Rauchwarenfabrik, A.G. v. New York Trust Co., 126 F. Supp. 684 (S.D.N.Y. 1954). *Contra* Chase Manhattan Bank v. United China Syndicate, 180 F. Supp. 848 (S.D.N.Y. 1960).

district courts.[8] 28 U.S.C. § 1330. That jurisdiction included the power to issue both prejudgment and postjudgment orders of attachment. 28 U.S.C. §§ 1609, 1610. Given the express grant of jurisdiction in the FSIA, this Court should not find an implied abrogation of that grant in a delegation of certain powers to the executive branch which do not on their face deal with judicial process.[9] *Electronic Data Systems Corp., Iran v. Social Security Organization of Iran*, No. CA3-79-218-F, slip op. at 21, 24-25 (N.D. Tex. June 7, 1981); *National Airmotive Corp. v. Iran*, 499 F. Supp. 401, 405 (D.D.C. 1980); *see Russian Volunteer Fleet v. United States*, 282 U.S. 481, 491-92 (1931).

As was recently declared by the court in *Electronic Data Systems Corp., Iran v. Social Security Organization of Iran*, No. CA3-79-0218-F (N.D. Tex. Feb. 12, 1981):

> I likewise conclude that despite the language in § 1702 that the President may nullify or void the exercise of any right, power or privilege with respect

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[8] Congress sought in the FSIA to preclude the intrusion of "diplomatic influences" of the type exerted by the Executive here. Marschalk Co., Inc., slip op. at 28-30.

> A principal purpose of this bill is to transfer the determination of sovereign immunity from the executive branch to the judicial branch, thereby reducing the foreign policy implications of immunity determinations and assuring litigants that these often crucial decisions are made on purely legal grounds and under procedures that insure due process.

H.R. Rep. No. 94-1487, 94th Cong., 2d Sess. 7, *reprinted in* [1976] U.S. Code Cong. & Ad. News 6606.

[9] The Government has also argued that a century-old statute, 22 U.S.C. § 1732, allows it to vacate the orders of attachment. It is clear, however, that that statute only authorizes the use of diplomatic or similar instrumentalities. Worthy v. Herter, 270 F.2d 905, 910 (D.C. Cir.), *cert. denied*, 361 U.S. 918 (1959); Narenji v. Civiletti, 481 F. Supp. 1132, 1141 n.7 (D.D.C.), *rev'd on other grounds*, 617 F.2d 745 (D.C. Cir. 1979), *cert. denied sub nom.* Confederation of Iranian Students v. Civiletti, 446 U.S. 957 (1980) (22 U.S.C. § 1732 "does not act to authorize the Chief Executive to abrogate individual rights guaranteed by the Constitution"). *See* American International Group, Inc. v. Islamic Republic of Iran, Nos. 80-1779 and 80-1891 (D.C. Cir. June 5, 1981) (Mikva, J., concurring).

> to property in which a foreign country or a national thereof has any interest, Congress could not and did not intend to grant the President power to nullify or void valid exercises of the judicial power by Article III Courts.

Id. at 23; *accord Marschalk Co., Inc.*, slip op. at 17-25 (allowing President to interfere with Article III courts is inconsistent with the express language as well as the purposes of the IEEPA).

(b) Even if the President has constitutional or statutory authority to issue a "revocable license" granting the* amici curiae *access to United States courts, any attachment obtained pursuant to such license cannot be vacated without provision for compensation

The Government has argued the broad proposition that any and all rights acquired by virtue of a revocable license may be revoked at any time. This argument permits the Government to negate the element of a "taking," thereby insulating it from the need to pay compensation. Contrary to the rule urged by the Government, a valid property right acquired pursuant to a "revocable license" may not be constitutionally eliminated without just compensation. Precedent does not support a contrary view.

When the granting of a license or the exercise of a licensed right creates an independently valuable property interest, the taking of the property interest—whether by means of direct governmental action or attempted "revocation" of the initial license or authorization—compels the payment of just compensation. *See, e.g., United States v. Smoot Sand and Gravel Corp.*, 248 F.2d 822, 827-28 (4th Cir. 1957) ("It cannot be disputed that when one is assigned the right, pending its revocation, to use or assume something to the exclusion of all others, . . . he has a species of property . . . [which] cannot be taken away by

the United States even for a public use without the owner being made whole."); *Marschalk Co., Inc.*, slip op. at 75 ("[E]ven assuming IEEPA expressly authorizes the nullification of attachments, that authority is limited by claimant's Fifth Amendment rights to due process and to just compensation if private property is taken for public use."). For example, in *Brownell v. National City Bank*, 131 F. Supp. 60 (S.D.N.Y. 1955), the defendant bank was a trustee under an indenture which provided for the issuance of a series of bonds by a German company, A.E.G., which defaulted on the bonds. The bank then obtained a revocable license permitting it to apply the debtor's other funds held by it to A.E.G.'s bond obligations plus certain service fees owned to the bank and others. The Government subsequently revoked the license relating to the payment of the service fees and sought return of those funds. The bank defended on the grounds that it "had relied to its prejudice upon the grant of the license by disbursing some of the [service fees obtained] to third parties and in doing other acts." Thus, argued the bank, the Government "was estopped from revoking the license." *Id.* at 62. In holding for the bank, the court held that the case not only presented "a question of administrative estoppel" but also "a question of petitioner's powers under the [TWEA]." *Id.* at 63. In so holding, the court distinquished the situation from the Government's unquestioned power to "*revoke a continuing license* as to tangible realty and chattels." *Id.* (emphasis added).[10]

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[10] The elements of reliance and estoppel, partially relied upon by the district court in *Brownell*, are particularly glaring in the instant situation. In its reply brief submitted in New England Merchants Bank v. Iran Power Generation and Transmission Co., No. 80-6254 (2d Cir. Apr. 9, 1981), the Government, at page 6 n.*, admitted that it promulgated the license authorizing attachments to induce claimants to tie up Iranian property in the courts. This enabled the Government to obtain another bargaining chip in its quest for a political settlement of the crisis. *See also Blocking Iranian Property, Message to Congress Reporting on U.S. Action*, 15 Weekly Comp. Pres. Docs. 2118 (Nov. 14, 1979) (freeze instituted to "enable the United States to assure that these

An example of a case in which the Government had power to revoke a license without compensation is *Acton v. United States*, 401 F.2d 896 (9th Cir. 1968), *cert. denied*, 395 U.S. 945 (1969). In that case, the plaintiff, pursuant to an exploration permit granted by the Atomic Energy Commission, was issued a right of entry onto public lands for the purpose of prospecting for and developing uranium ore reserves. The permit provided that "[t]he Commander . . . shall have the right to withdraw this right of entry either in whole or in part at any time." *Id.* at 898. Upon withdrawal of the permit, the plaintiff sued the United States for compensation, claiming a Fifth Amendment taking. In rejecting the plaintiff's claim, the Court of Appeals emphasized that "[t]his obligation [to compensate], however, recognizes only vested property rights, and not the tenuous rights of licenses and permits, even though these at times may have value." *Id.* at 899.

The case of *Isthmian Airways, Inc. v. United States*, 94 Ct. Cl. 598 (1941), posed a similar situation. In *Isthmian Airways*, a revocable license allowed the plaintiff to occupy land and to erect hangers and shops to be used in operating an airline. An agreement reached between the plaintiff and the Governor of the Panama Canal Zone required the plaintiff, among other things, to pay "a rental of $100 per year" for the license. *Id.* at 599. After plaintiff breached its commitments, the Governor terminated the license and permit and required the plaintiff to

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resources will be available to satisfy lawful claims of citizens and entities of the United States against the Government of Iran.").

In reliance upon that statement, as well as the general license issued by the Department of the Treasury, the *amici* incurred substantial legal fees and disbursements to obtain and perfect their orders of attachment. "In so doing, it is clear that [the *amici curiae*] had a reasonable expectation that by relying on the government's action, it would not thereafter have its rights to the attachment nullified by another government action." Marschalk Co., Inc., slip op. at 81. The *amici curiae* are therefore in a different position than plaintiffs in American International Group, Inc., since the court held in that case that plaintiffs had no claim to a reasonable expectation that their rights would be protected. *Id.*, slip op. at 43.

remove its improvements from the land. The court rejected plaintiff's claim for compensation, citing the revocable nature of the license and plaintiff's failure to comply with the conditions of the permit.

A common theme runs through both *Acton* and *Isthmian Airways*. Both of those cases involved the licensing of rights in the nature of tenancies revocable at will. The licenses gave the plaintiffs nothing more than a continuing right to enter upon land and remain there for the purpose of prospecting for minerals (*Acton*) or operating a business (*Isthmian Airways*). The licenses did not confer upon either plaintiff a right which—if exercised—would have had the effect of merging the license into the interest acquired. In *Acton* and *Isthmian Airways*, the licenses or permits themselves—not the property acquired pursuant to the authorizations contained in the licenses—constituted the things of value. In neither case did plaintiffs lose those property interests which had been acquired pursuant to the licenses prior to their revocation.

Here, unlike the situation in *Acton* and *Isthmian Airways*, the *amici curiae* used the continuing license authorizing judical proceedings to obtain, prior to revocation, independently valuable property interests—valid prejudgment orders of attachment. These attachments have a value separate and apart from the license which authorized them. As did the bank in *Brownell*, the *amici curiae* relied on the license to obtain valuable property rights. Once the *amici curiae* so relied upon the license granted, the Government lost the ability to recreate the *status quo ante* by attempting to revoke the initial authorization, since, as in *Brownell*, there was nothing left to revoke.[11]

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[11] Orvis v. Brownell, 345 U.S. 183 (1953), does not mandate a different result. In *Orvis*, the plaintiff attempted to assert a property interest allegedly obtained through an order of attachment against the Alien Property Custodian. Plaintiff had never, however, obtained a license for such attachment. Furthermore, this Court expressly held that the attachments created a right in the attaching creditor as against the debtor. 345 U.S. at 186-87. Similarly, in the cases at bar, the *amici* have used their orders of attachment to obtain rights vis-a-vis the defendants, not the United States. *Orvis* is therefore properly distinguishable. Marschalk Co., Inc., slip op. at 70-72.

In sum, once the *amici curiae* relied on the license and acquired valid attachments, the Government lost the right to take those property interests without compensation.

3. The *Amici Curiae's* Claims Constitute Compensable Property Interests

Choses in action are property protected by the Fifth Amendment. *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951); *see Lynch v. United States*, 292 U.S. 571, 579 (1933); *United States v. Northern Pacific Ry. Co.*, 256 U.S. 51, 64-67 (1921). When the right to enforce a contract in the United States courts is taken away or materially lessened, the contract and the rights thereunder are "taken" within the meaning of the Fifth Amendment. *Marschalk Co., Inc.*, slip op. at 61; *Seery v. United States*, 127 F. Supp. 601 (Ct. Cl. 1955); *Gray v. United States*, 21 Ct. Cl. 340 (1886); *see also National Airmotive Corp. v. Government of Iran*, 499 F. Supp. 401, 406 (D.D.C. 1980). It is absolutely clear that the United States district courts have jurisdiction under the FSIA, including 28 U.S.C. § 1330, to hear private commercial disputes against foreign states and their agencies, instrumentalities and controlled entities.

B. The Purported Suspension of the Amici Curiae's *Claims and Vacatur Of Their Attachments Constitute A Compensable "Taking" Of Private Property*

It is well settled that the President must act in accordance with all the limitations imposed by the Constitution. *Reid v. Covert*, 354 U.S. 1 (1957) (plurality opinion). The President's actions in connection with foreign affairs are not absolved from this requirement. The teaching of *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936), for example, is only that the limits of delegation are not so stringently applied in the foreign relations area as in others. The *Curtiss-Wright* court specifically observed that executive power in foreign affairs is

subordinate to other constitutional provisions. *Id.* at 320. All treaties are thus subject to the Constitution. *See Reid v. Covert*, 354 U.S. at 17. Professor Henkin has similarly observed that "[n]othing in the Constitution suggests that the rights of individuals in respect of foreign affairs are different from what they are in relation to other exercises of governmental power." L. Henkin, *Foreign Affairs and the Constitution* 252 (1972).

The President, pursuant to Executive Order No. 12,294, has purported to "suspend" all claims until final disposition through the arbitral tribunal. As to the distinction between "terminating" or "suspending" lawsuits against Iran, "there is no practical difference." *Marschalk Co., Inc.*, slip op. at 60.

The Government has previously argued that it, not the *amici*, owns the claims against Iran, and that there can, therefore, be no "taking" of private property within the meaning of the Fifth Amendment.[12] The Government has explained that "[s]ettlement of an international claim is not a taking, because the claim belongs to the United States, . . . and because against foreign governments there can be no assured right of compensation." United States Brief at 28 n.*.

The Government unfortunately confuses its general power over the disposition of foreign claims with the ownership of those claims. Thus, in the Government's view, its purported power to settle claims precludes compensation for the exercise of that power. In fact, the Government's power to take property, whether by a foreign claims settlement or by an eminent domain proceeding, mandates a corollary right to Fifth Amendment compensation of those parties whose property has been taken.

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[12] *See, e.g.*, Brief In Support of United States' Motion to Vacate Attachment and for Stay of Litigation of Claims Subject to Arbitration at 28 n.*, New England Merchants National Bank v. Iran Power Generation and Transmission Co., No. 80-6254 (2d Cir. Apr. 9, 1981) ("United States Brief") ("The United States does not concede that settlement of a national's claim is a taking requiring compensation."); *see also id.* at 44 ("termination of attachments and other non-Iranian interests against Iranian assets causes no compensable loss.").

This right to compensation under the Fifth Amendment has been upheld by a number of courts. In *Gray v. United States*, 21 Ct. Cl. 340 (1886), one of the "French Spoliation Claims" cases, the Court of Claims found that the settlement of claims by the United States of its nationals against France for seizure of American ships in return for the renunciation by France of certain claims against the United States for treaty violations created a right to compensation under the Fifth Amendment. The Court of Claims stated:

> That any Government has the right to [settle claims of its citizens against a foreign state], as it has the right to refuse war in protection of a wronged citizen, or to take other action, which, at the expense of the individual, is most beneficial to the whole people, is too clear for discussion. Nevertheless, the citizen whose property is thus sacrificed for the safety and welfare of his country has his claim against that country; he has a right to compensation, which exists even if no remedy in the courts or elsewhere be given him.

Id. at 392-93.

In *Aris Gloves, Inc. v. United States*, 420 F.2d 1386 (Ct. Cl. 1970), the Court of Claims denied Fifth Amendment compensation to a claimant whose property, located in Germany during World War II, was released to the U.S.S.R. as a result of the Potsdam Agreement. In denying the claim, the court held that a wartime appropriation of privately owned property found in enemy territory was an appropriation of enemy property, regardless of the owner's nationality.

Judge Nichols, in his concurring opinion, thoroughly analyzed the *Gray* case, including those factual elements in it which distinguished it from *Aris Gloves*. As Judge Nichols explained:

> It appears to me that to satisfy the *Gray* court, plaintiff here would have had to show as a minimum (a) that the acts of the USSR in seizing United States owned plants in East Germany as "reparations" were

> contrary to international law, (b) that the USSR's authorities would sooner or later have acknowledged the fact and paid compensation to the United States owners, and (c) that the United States representatives at Potsdam knowingly surrendered this possibility of compensation in return for concessions by the USSR in unrelated areas. Plaintiff has not even demonstrated proposition (a), still less the others.

420 F.2d at 1396-97.

In so explaining, Judge Nichols summarized the requisites for a "taking" compensable under the Fifth Amendment. These requisites essentially are (1) a valid cause of action, (2) the assurance of eventual compensation from the foreign state,[13] and (3) the compromise or settlement of the cause of action by the Government for a purpose (such as release of the hostages) unrelated to the merits of the claim. This analysis is supported by the *Restatement (Second) of the Foreign Relations Law of the United States* (1965):

> The question whether the United States must pay a national of the United States for waiving, or settling for less than full value, his claim for injury by a foreign state may arise in situations where the government may determine that other factors, such as political considerations, affecting the relations of the United States with the foreign state, call for a settlement less favorable to the United States than it would seek if it were concerned only with the economic considerations arising out of the claim and similar claims of other United States nationals.

Id. § 213, Reporters' Note.

All three requisite elements exist in the cases before this

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[13] *Compare* United States Brief at 28 n.* (allegation that "[s]ettlement of an international claim is not a taking . . . because against foreign governments there can be no assured right of compensation").

Court. Before the Government's settlement with Iran, the *amici curiae* had valid commercial causes of action against Iran or its agencies or instrumentalities[14] and all *amici* with valid attachments were assured of full payment through their attachments. Moreover, the Government clearly entered into the settlement for numerous reasons wholly unrelated to a settlement on the merits of the claims.[15]

As this Court has previously stated, "only those economic advantages are [property] 'rights' which have the law back of them and only when they are so recognized may courts compel others . . . to compensate for their invasion." *United States v. Willow River Power Co.*, 324 U.S. 499, 502 (1945). Thus, claimants without valid causes of action, or without a reasonable prospect of recovery absent governmental interference, are not entitled to compensation under the Fifth Amendment. In *United States v. Pink*, 315 U.S. 203, 228 (1942), for example, the Court expressly recognized that the Fifth Amendment was a limitation upon the operation of the Litvinov Assignment, an executive agreement recognizing the Soviet government and settling claims between American and Russian claimants. The claimants in *Pink* were non-nationals of the United States whose claims

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[14] Under the FSIA, a foreign state may not claim immunity from suit when, *inter alia*, a foreign state defendant has engaged in commercial activity. 28 U.S.C. § 1602, 1605(a)(2). Thus, as the District Court for the Southern District of New York observed with regard to 96 cases consolidatd before it, including most of the actions brought by the *amici curiae*:

> There is no question that the instant actions, bar none, are commercial in nature. Indeed, plaintiffs seek monetary damages for alleged civil wrongs ranging from the nationalization and/or conversion of personal property in Iran to the repudiation and breach of various and sundry executory contracts.

New England Merchants National Bank, 502 F. Supp. at 123; *see also id.* at 133. Thus, regardless of whether Iran may claim immunity from prejudgment attachment, there is no question that it may not, pursuant to the FSIA, claim immunity from suit.

[15] Indeed, the favored treatment received by some American interests—namely the banks—attests to the relative unimportance the Government placed on notions of equity as applied to individual claimants.

arose abroad and were not connected with the assets in question. The Court found that although aliens were protected by the Fifth Amendment, no private property was taken, since a state law establishing priorities among creditors, to the detriment of aliens, did not rise to the level of a taking of property for purposes of the Fifth Amendment. *See* Dean, *Amending The Treaty Power*, 6 Stanford L. Rev. 589, 605 (1954); *see also Marschalk Co., Inc.*, slip op. at 51 (*Pink* "do[es] not stand for the proposition that the President may take claims of United States citizens and use them as bargaining chips when negotiating an international agreement.").

Indeed, the enactment of the FSIA presages a modern era of Fifth Amendment cases. Unlike the pre-1976 precedents cited by the Government,[16] the cases at bar indisputably involve judicially cognizable claims fully secured by valid prejudgment attachments.[17] Since the passage of the FSIA, the executive branch may no longer argue that all foreign claims are contin-

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[16] Prior to enactment of the FSIA, a judgment creditor was unable to execute on property of a foreign state debtor. Electronic Data Systems Corporation, Iran v. Social Security Organization of Iran, No. CA3-79-218-F, slip op. at 17 (N.D. Tex. June 7, 1981). Even the most recent settlement cited by the Government (between the United States and the Peoples Republic of China) compromised claims that had arisen prior to the FSIA. *See* Comment, *The Blocked Chinese Assets-United States Claims Problem: The Lump Sum Settlement Solution*, 3 Fordham Int'l L.J. 51 (1979-1980). Pre-FSIA precedent is therefore no longer dispositive. Marschalk Co., Inc., slip op. at 52.

[17] Many of the cases relied upon by the Government are thus inapposite. For example, the reasoning of Avramova v. United States, 354 F. Supp. 420 (S.D.N.Y. 1973), is inapplicable since the court therein based its reasoning on the fact that adjudication by a claims commission does not create a vested right to payment of the claims. The *amici curiae* do have vested rights in litigating their claims and in their orders of attachment obtained pursuant to the FSIA. *See also* United States v. Guy W. Capps, Inc., 204 F.2d 655, 660 (4th Cir. 1953), *aff'd*, 348 U.S. 296 (1955) (executive agreements may not conflict with prior statute or treaty); Seery v. United States, 127 F. Supp. 601 (Ct. Cl. 1955) (executive agreement between the United States and Austria could not abrogate plaintiff's right to just compensation following a governmental taking).

gent in nature, subject to unrestricted compromise by the United States in furtherance of its foreign policy objectives. Section 1602 unambiguously provides: "Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States *in conformity with the principles set forth in this chapter.*" (Emphasis added.) As in *Williams v. Heard*, 140 U.S. 529, 541 (1890),

> [The claims] were rights growing out of property; rights, it is true that were not enforceable until after the passage of the Act of Congress for the distribution of the fund. But the Act of Congress did not create the rights. They had existed at all times since the losses occurred. They were created by reason of losses having been suffered. All that the Act of Congress did was to provide a remedy for the enforcement of the right.

The FSIA provides a similar remedy.

Thus, the taking of the *amici's* claims and orders of attachment for a public purpose of the Government, mandates compensation.

C. *Since The Government Has Taken Property Of The* Amici Curiae *For A Public Purpose, The* Amici Curiae *Are Entitled To Just Compensation, Which The* Amici Curiae *Have Not Received. The Issue Of Compensation Is Therefore Ripe For Adjudication By This Court*

The compensation which the Fifth Amendment requires is the "full monetary equivalent" of the property interests which were taken. "The owner is to be put in the same position monetarily as he would have occupied if his property had not been taken." *United States v. Reynolds*, 397 U.S. 14, 16 (1970). The fact that the exact dollar amount to which a claimant is entitled cannot be established at the time of the taking is irrelevant in determining whether such a claim exists. *See Regional Rail Reorganization Act Cases*, 419 U.S. 102, 124 (1974).

Pursuant to the Agreement which settled the Iranian crisis, most of the claims of American nationals against Iran are to be resolved by the Iran-U.S. Claims Tribunal, an arbitral tribunal to be established at The Hague. Declaration of the Government of the Democratic and Popular Government of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran art. II ("Claims Settlement Declaration") (App. 30). The United States agreed to terminate claimants' lawsuits, cause the claimants' attachments to be vacated and return previously attached funds to Iran. Declaration of the Government of the Democratic and Popular Government of Algeria, Gen. Prin. ¶ B ("Declaration") (App. 21). A security fund of $1 billion will be created out of frozen Iranian assets from which the arbitral awards will be paid. Iran has agreed to replenish the fund if and when it falls below $500 million. *Id.* ¶ 7. The Claims Settlement Declaration sets no priorities with respect to access to the Tribunal or with respect to the order of payment of awards.

Many of the *amici curiae* view Iran's promise to replenish the security fund with profound skepticism. An examination of the complaints filed in the District Court for the Southern District of New York, for example, reveals that non-bank claims in that district alone total more than $1 billion. Under the Iran-U.S. Settlement Agreement, therefore, the *amici curiae* with valid attachment orders could well be in a far worse position than if their lawsuits were continued. Many of these *amici curiae* will be compelled to trade a United States forum[18] and full security

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[18] In addition to losing their attachments, some *amici curiae* will be denied access to the Tribunal and, thus, even to the limited security fund. The jurisdiction of the Tribunal does not include "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole discretion of the competent Iranian courts in response to the Majlis position." Claims Settlement Declaration art. II(1). Also excluded are claims arising out of the seizure and detention of the hostages and "injury to the United States nationals or their property as a result of popular movements in the course of the Islamic Revolution in Iran which were not an act of the Government of Iran." Declaration ¶ 11.

in exchange for possible access to a limited fund.[19] Indeed, one court has already found that "[i]n the instant cases, nothing has been received in exchange for the suspension of litigation in the United States." *Marschalk Co., Inc.*, slip op. at 46. *Contra American International Group, Inc.*, slip op. at 38.

Should the executive orders and regulations implementing the Iran-U.S. Settlement Agreements be held constitutional, the *amici* who are not eligible to participate in the arbitral tribunal will be stripped of their secured claims and, after obtaining judgments, will be forced to chase Iranian assets across the globe in the hopes of satisfying those judgments.[20] Those *amici* who are fortunate enough to fit the eligibility requirements of the Iran-U.S. Settlement Agreement will be ousted from the United States court system, and be forced to bring their claims in an international arbitral tribunal, no doubt incurring substantial additional expenses in order to comply with procedures that have not yet been disclosed, with final awards fully secured only by an Iranian promise to pay.

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[19] *See* Swift & Company Packers v. Compania Colombiana del Caribe, S.A., 339 U.S. 684, 697-98 (1950) (improper for court to relegate American citizen to foreign forum "without assuring the citizen that respondents would appear in those courts and that security would be given equal to what had been obtained by attachment in the District Court").

[20] The Court of Appeals for the First Circuit has pointed out, in connection with its holding that the compensation issue is not ripe for review, that the "Tribunal Award may . . . be more valuable, in terms of enforcement abroad, than an equivalent unsecured United States court judgment." Chas. T. Main International Inc. v. Khuzestan Water & Power Authority, No. 80-1027, slip op. at 24 (1st Cir. May 22, 1981). For those *amici* who are barred from the Tribunal, the proper comparison is between a fully secured United States court judgment and an unsecured one (since all attachments are purportedly vacated pursuant to the Iran-U.S. Settlement Agreement). For other *amici* who may participate in the Tribunal, the proper comparison is between a fully secured United States court judgment and a Tribunal award backed by a possibly limited security fund and an Iranian promise to pay. The *amici* submit that the *Chas. T. Main* court and the court in American International Group, Inc. v. Islamic Republic of Iran, Nos. 80-1779 and 80-1891 (D.C. Cir. June 5, 1981) failed to realize the full effect of the Iran-U.S. Settlement Agreement.

A right to compensation has been expressly recognized by several district courts in the context of the Iranian cases.

> [L]evies made under orders of the Court vested in these plaintiffs certain inchoate rights to the frozen Iranian assets. Although these rights may not now be fixed and certain, they still are rights in property. As a result, the cancellation of these rights by the executive department may only be accomplished by due process of law.

New England Merchants National Bank, 508 F. Supp. at 51. *See also id.* at n.3, *quoting National Airmotive Corp. v. Iran*, 499 F. Supp. 401, 406 n.10 (D.D.C. 1980) ("the United States always retains the option of spending tax funds in pursuit of its foreign policy objectives, as distinguished from private funds or claims to private funds where its authority is much more limited"). This liability was also recognized in *Behring International, Inc. v. Miller*, No. 80-2864 (D.N.J. Dec. 24, 1980):

> So long as citizens of this country remain hostage to a foreign power, the Executive must have the means to deal with that situation. The rights of the plaintiff, in the interim, have not been violated or altered, but on the contrary are preserved as against the subject fund. Even if said funds were ultimately utilized by the government in obtaining the release of the hostages, *this court can envision no circumstances under which the plaintiff would not be entitled to compensation from the government.* No matter how just the cause, an individual's property may not be utilized by the government without due process and just compensation. U.S. CONST. amend. V.

Id. at 11 (emphasis added).

It is apparent that most, if not all, *amici curiae* are unable, at the time of submission of this brief, to quantify the amount of their losses caused by implementation of the Iran-U.S. Settle-

ment Agreement.[21] The inability to value the loss with precision, however, is not fatal to the *amici curiae's* right to adjudication of the taking issue, since the rule expressed in the *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974), is directly on point. There, major creditors and the sole stockholder of a railroad in reorganization challenged the constitutionality of the Regional Rail Reorganization Act of 1973 on several grounds, including the Government's failure to provide a compensation mechanism for the plaintiffs' losses. The "losses" alleged were of two types: (1) losses sustained because the Act provided for inadequate compensation for railroad property condemned, and (2) so-called "erosion taking" losses which the plaintiffs contended would be caused by the Act's requirement that the railroad continue to operate pending reorganization. The plaintiffs alleged that this continued operation would generate operating losses which would, over time, further reduce the value of their property interests in the bankrupt's estate.

In a lengthy opinion, this Court decided that the Act was not unconstitutional because the plaintiffs had access to the Court of Claims under the Tucker Act, thus effectively holding that the provision for just compensation was a condition precedent to a finding of constitutionality, the same holding which the *amici curiae* urge in the case at bar. This Court further held that such claims for losses—including losses alleged to arise out of the effect of an "erosion taking"—were ripe for adjudication. As this Court declared:

> We conclude in any event that the availability of a Tucker Act remedy if the Rail Act effects an "ero-

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[21] Such losses may, in some cases, equal the difference between the amount awarded by the Iran-U.S. Claims Tribunal and the amount received from the limited security fund, assuming Iran fails to abide by its commitment to replenish the security fund. Such losses may be calculated differently for those *amici curiae* who lose their attachments and are denied access to the Tribunal because of the Agreement's exclusionary clauses. These *amici* may be entitled to an amount up to the amount originally attached, assuming, of course, that they prevail in court on the merits of their claims. Still other *amici curiae* may be entitled to other measures of compensation if, for example, the Tribunal, for political or other reasons, fails to accord them a fair hearing or other rudiments of due process. In such cases, the ousting of these *amici* from United States courts will have generated losses independent from those resulting from any nullification of the existing attachment orders.

> sion taking" is ripe for adjudication. *It is true that there has been no definitive determination that erosion of the Penn Central estate has reached unconstitutional dimensions*—that is, that the estate has suffered losses unreasonable even in light of the public interest in continued rail service pending reorganization. But the Penn Central Reorganization Court found that Penn Central [was sustaining continuing operating losses] . . . . Thus, failure to decide the availability of the Tucker Act would raise the distinct possibility that those appellees would suffer an "erosion taking" without adequate assurance that compensation will ever be provided.

419 U.S. at 123-24 (emphasis added).[22]

Similarly, in *Stringer v. United States*, 471 F.2d 381 (5th Cir.), *cert. denied*, 412 U.S. 943 (1973), plaintiffs-land owners sued the Government for damages, based on their Fifth Amendment rights to due process and just compensation, after the United States seized their property without notice and without initiating condemnation proceedings. In holding for the Government, the Fifth Circuit explained that—"high-handed" though it may be—the Government may constitutionally seize property without notice or hearing. 471 F.2d at 384. The only constitutional predicate was the availability of a Tucker Act remedy. As the *Stringer* court declared, determination of the availability of a Tucker Act remedy is required *at the time of the taking* and may not be deferred to a date when the amount of loss is quantifiable. This is particularly true when—as in the instant cases—the Government has, on the one hand, sought to seize the property

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[22] Contrary to the analysis of the Court of Appeals in American International Group v. Islamic Republic of Iran, Nos. 80-1779 and 80-1891, slip op. at 38 (D.C. Cir. June 5, 1981), this Court in the *Regional Rail Reorganization Act Cases* was careful to establish that it was not certain that plaintiffs would in fact suffer losses because of the "erosion taking."

interests of the *amici curiae* while, on the other hand, denied the availability of a Tucker Act remedy. United States Brief at 28 n.*. The Government cannot have it both ways. *See also United States v. Dow*, 357 U.S. 1 (1958); *Hurley v. Kincaid*, 285 U.S. 95 (1932).

Thus, a taking has occurred and the compensation issue is ripe for consideration.

D. This Court Should Hold That The Court Of Claims Has Jurisdiction To Determine Claims For Compensation Brought By The Amici Curiae *Who Have Suffered Losses*

Essential to this Court's finding that the Iran-U.S. Settlement Agreement is constitutional is a determination that either a mechanism exists by which the *amici* may recover compensation when the *amici's* losses may be quantified or that the United States must fashion a remedy by which the *amici* can be made whole. The Tucker Act provides the *amici* with a forum to adjudicate their claims for compensation since Congress waived the United States' immunity with respect to "any claims against the United States founded . . . upon the Constitution." 28 U.S.C. § 1491. Indeed, as the decision in the *Regional Rail Reorganization Act Cases* explains, the remedy provided by the Tucker Act fulfils the constitutionally mandated requirement for just compensation. If there were no access to the Court of Claims for the *amici curiae*, the Government's implementation of the Iran-U.S. Settlement Agreement would be unconstitutional. *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974); *Marschalk Co., Inc.*, slip op. at 82-83; *see also United States v. Dow*, 357 U.S. 17 (1958); *Hurley v. Kincaid*, 285 U.S. 95 (1932); *Stringer v. United States*, 471 F.2d 381 (5th Cir.), *cert. denied*, 412 U.S. 943 (1973).

The district court in *Marschalk Co., Inc.*,—recognizing that claimants' access to the Court of Claims was a condition precedent to a finding of constitutionality—held that the Tucker Act's treaty exclusion provision, 28 U.S.C. § 1502, barred the claimant's access to the Court of Claims in the cases at bar. Thus, the Iran-U.S. Settlement Agreement could not be constitutionally implemented absent an express provision for compensation. *Marschalk Co., Inc.*, slip op. at 82-84.

Under Section 1502, "the Court of Claims shall not have jurisdiction of any claim against the United States growing out of or dependent upon any treaty entered into with foreign nations." Contrary to the conclusion of the *Marschalk* court, other courts have been uniform in their interpretation that, in order for Section 1502 to be applicable, there must exist a direct, proximate connection between a treaty stipulation and a claim such that the right itself upon which the claim is founded "must have its origin—derive its life and existence—from some treaty stipulation." *United States v. Weld*, 127 U.S. 51, 56 (1887).

For example, the claim in *United States v. Weld* involved a suit against the Government for the unpaid balance of a judgment rendered by the Court of Commissioners of Alabama Claims. That court had been created by Congress to adjudicate claims against the British Government arising from maritime losses inflicted during the Civil War by the Confederate cruisers "Alabama" and "Florida," which were built and supplied by the British Government. Funds necessary to satisfy such claims were initially paid into the Treasury of the United States by the British government pursuant to the Alabama Claims Treaty and the Geneva Award.

This Court held that the plaintiff's claim arose out of the judgment of the Court of Commissioners and the congressional act appropriating the funds to satisfy such judgments, not the treaty. The Court of Claims therefore had jurisdiction over plaintiff's cause of action. *See United States v. Old Settlers*, 148 U.S. 427, 468-69 (1893), (a case "growing out of a treaty is one involving rights given or protected by a treaty").[23]

In *Societe Anonyme Des Ateliers Brille Freres v. United States*, 160 Ct. Cl. 192 (1963), a French corporation, sought to recover settlement funds held by the United States pursuant to

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[23] In *Eastern Extension, Australasia & China Telegraph Co. v. United States*, 251 U.S. 326 (1913), the appellant constructed telegraph cables between Hong Kong and the Philippines pursuant to a contract with Spain which granted appellant an annual subsidy. The United States subsequently assumed sovereignty over the Philippines as a result of a treaty with Spain. After the United States failed to pay the subsidy, appellant sued, arguing that the United States had assumed Spain's contractual obligations. The Court of Claims dismissed the petition. *[footnote continued on following page.]*

an escrow agreement and relating to the United States use, as licensee, of plaintiff's patents during World War II. The funds were to be held in escrow pending determination of the applicability of the Byrnes-Blum Agreement between France and United States, under which France had agreed to pay its nationals' war-related claims against the United States. Following the reasoning of *Weld* and *Old Settlers*, Chief Judge Jones stated:

> The Byrnes-Blum Agreement has not been drawn into consideration in this case in the manner anticipated by the Supreme Court in the Old Settlers case, *supra* . . . . *Indeed, this case would never have arisen were it not for the existence of the Byrnes-Blum Agreement*, because it is that very Agreement that motivated the parties to establish the "escrow" account around which this dispute is centered. *Yet that is a far cry from finding that the claim before us "derives its life and existence" from some treaty stipulation*, as the Weld case, *supra*, would require. Instead, the substance of plaintiff's claim is derived from the original patent license contract. This is at the heart of its claim to royalties.

Id. at 197-98 (emphasis added) (citations omitted).

Thus, although a treaty may create a factual situation from which a claim may arise, the determination of the applicability of Section 1502 rests upon the legal genesis of that claim. In other words, the legal right asserted must be one which is derived from a treaty or from the provisions of a treaty, rather than a legal right which is created by the Constitution or laws of the United States. *See also Hughes Aircraft Co. v. United States*, 534 F.2d 889 (Ct. Cl. 1976); *S.N.T. Fratelli Gondrand v. United States*, 166 Ct. Cl. 473 (1964).

This Court held that to the extent the appellants' claim was "deemed to rest *exclusively* upon the transfer of sovereignty, upon the theory that thereby, under the principles of international law, an obligation in [appellant's] favor was imposed on the United States," *id.* at 333 (emphasis added), the claim grew out of or was dependent upon a treaty, and was barred. The Court also held, however, that if the petition stated that a contract was to be implied because of the United States' use of appellant's facilities, the Court of Claims would have jurisdiction to hear the action.

The right to recover in the instant cases is founded upon the Fifth Amendment, and not the Iran-U.S. Settlement Agreement. Indeed, even if the security fund established under the Agreement were the exclusive resource from which awards would be satisfied (which it is not), the "right itself" would not derive from these executive agreements. The jurisdictional limitation of Section 1502, therefore, does not exclude the *amici curiae* from the Court of Claims.

Should this Court determine that the *amici* and other parties similarly situated are barred from the Court of Claims and that the United States has failed to provide a remedy by which compensation for the taking may be recovered, this Court must preclude the implementation of the Iran-U.S. Settlement Agreement until such time as a mechanism for compensation is provided. Without the availability of such a procedure, the President's actions are without authority and are constitutionally infirm.

CONCLUSION

For the reasons set forth above, the question presented to the Court should be answered in the affirmative.

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Respectfully submitted,

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APPENDIX A

APPENDIX A

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Otis Engineering Corporation v. NIOC, 79 Civ. 6484 (RWS)
Halliburton Limited v. NIOC, 79 Civ. 6485 (RWS)
Houston Contracting Company v. NIOC, 79 Civ. 6488 (GLG)
Houston Contracting Company v. NIOC, 79 Civ. 6489 (MEL)

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Ingersoll-Rand Co. v. NIOC and National Iranian Gas Co. ("NIGC"), 79 Civ. 6867 (RWS)
Irano-Reading & Bates, S.S.K. v. NIOC, 79 Civ. 6831 (VLB)
Enserch Service Company of Iran v. NIGC and NIOC, 80 Civ. 0560 (WCC)
Williams Brothers International Corp. v. NIOC, 80 Civ. 1099 (LPG)
Compagnie Francaise de Prospection Sismique v. NIOC, 80 Civ. 1920 (ADS)
Houston Contracting Company v. Chase Manhattan Bank, N.A. and Bank Tejarat, 80 Civ. 3441 (LPG)
Shirazi v. Bank Markazi Iran, 80 Civ. 6117 (RO)
Brown & Williamson Tobacco Corp. v. Ministry of Mines and Light Industry of the Gov't of Iran, World Express Co., Ministry of Tourism of the Gov't of Iran and the Islamic Republic of Iran, 81 Civ. 0283 (CLB)
Enserch Corp., Tair Inc. and Intairdril v. NIOC, Islamic Republic of Iran and Irano-Intairdril, S.S.K., 81 Civ. 0292 (LWP)
Brown & Root, Inc., Brown & Root, S.A. and Brown & Root International v. Government of Iran, Civ. Action No. R80-2961 (D. Md.)
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